

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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UNITED STATES OF AMERICA,

Case No. 10-CR-0292 (PJS/JSM)

Plaintiff,

v.

ORDER

LA'SHAWN KENYATTA NICKS-BEY,

Defendant.

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On December 7, 2011, the Court sentenced defendant La'Shawn Kenyatta Nicks-Bey to 84 months' imprisonment and 3 years of supervised release. Nicks-Bey now brings a motion requesting that the Court reduce his sentence because he has done well in prison and believes that he has more to offer society outside of prison. ECF No. 80 at 2.

The Court, however, does not have authority to reduce Nicks-Bey's sentence on these grounds. Nicks-Bey is not claiming that his sentence was imposed in violation of the Constitution or federal law, as would be necessary to invoke 28 U.S.C. § 2255, or that his sentence is the result of "arithmetical, technical, or other clear error," as would be necessary to invoke Fed. R. Crim. P. 35(a), or that his sentence is a result of "clerical error," as would be necessary to invoke Fed. R. Crim. P. 36. The Director of the Bureau of Prisons has not made a motion pursuant to 18 U.S.C. § 3582(c)(1)(A), nor has the government brought a motion pursuant to Fed. R. Crim. P. 35(b). Finally, Nicks-Bey does not contend that, in the time since he was sentenced, the applicable sentencing range has been lowered pursuant to 28 U.S.C. § 994(o), as would be necessary to invoke 18 U.S.C. § 3582(c)(2).

Even if the Court had authority to shorten Nicks-Bey's sentence, the Court would deny Nicks-Bey's motion. The Court has already considered all the relevant facts and law and has determined, for the reasons stated on the record at the sentencing hearing, that Nicks-Bey's sentence is sufficient, but not greater than necessary, to serve the purposes set forth in 18 U.S.C. § 3553(a)(2). Nicks-Bey's motion is therefore denied.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY ORDERED that defendant La'Shawn Kenyatta Nicks-Bey's motion to reduce his sentence [ECF No. 80] is DENIED.

Dated: March 15, 2013

s/Patrick J. Schiltz

Patrick J. Schiltz

United States District Judge